HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.15689 of 2001

Between:

G. Srinivas Rao … Petitioner

And

The Singareni Collieries Co. Ltd.,
represented by its General Manager,
Mandamarri Area, Adilabad District
and two others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Sri P. Sridhar Rao

Counsel for Respondents: Ms. Uma Devi

-

-

-

March 16, 2006

-

-

-

-

-

-

-

-

-

Per G.S.Singhvi, C.J.

Whether the petitioner who was appointed in the services of the Singareni Collieries Company Limited (hereinafter described as 'the company') as Electrician and was deputed to work at Computer Centre vide office order dated 26-8-1998 could be sent back to work as Electrician is the question which arises for determination in this petition filed under Article 226 of the Constitution for quashing communication dated 12-7-2001 issued by Senior System Analyst, Mandamarri Area of the company requiring the petitioner to report for duty to Colliery Manager, Kalyani Khani 5A.

The petitioner joined service of the company as Electrician on 18-10-1988. While he was posted at Kalyani Khani 5A, General Manager, Mandamarri Area issued notice dated 20-7-1998 inviting applications from the serving employees having Diploma or Certificate in Computer Sciences to appear for test/interview to find out their suitability to work on computers. In furtherance of that notice, the petitioner and twelve other employees took written and practical test. The petitioner was declared successful. Thereafter, vide office order dated 26-8-1998, General Manager, Mandamarri Area deputed the petitioner to work at Computer Centre, Mandamarri for a period of two months from 27-8-1998. At the end of two months period, the

petitioner could have been sent back to his original position to work as Electrician, but the concerned authority did not pass any order and, on that account, he continued to work at the Computer Centre till the issuance of communication dated 12-7-2001, vide which Senior Systems Analyst, Mandamarri relieved him with an advice to report for duty to Colliery Manager, Kalyani Khani 5A.

The petitioner has challenged his virtual repatriation to the original position by contending that as a sequel to his selection and appointment on the post of Electronic Data Processing Assistant (for short 'EDP Assistant'), he had acquired a right to hold that post and his status cannot be altered without enquiry and without complying the rules of natural justice. He has pleaded that notwithstanding the use of the 'deputation' in order dated 26-8-1998, he will be deemed to have been permanently absorbed on the post of EDP Assistant and as such, the System Analyst could not have transferred him to the original post of Electrician.

In the counter filed on behalf of the respondents, it has been averred that the petitioner was never appointed as EDP Assistant and order dated 26-8-1998 passed by General Manager, Mandamarri deputing him to work at the Computer Centre cannot be treated as an order of appointment. It is also the case of the respondents that the petitioner was not selected for appointment as EDP Assistant and, therefore, he cannot claim any right to hold that post.

Sri P. Sridhar Rao relied on the judgment of the Supreme Court in **Umapati Choudhary v. State of Bihar** and argued that the petitioner who had been appointed on the post of EDP Assistant and had worked in that capacity for a period of almost three years could not have been repatriated to the parent cadre of Electrician. Learned counsel emphasised that having worked for a long period of almost three years, the petitioner will be deemed to have acquired a right to be permanently absorbed on the post of EDP Assistant. He then submitted that the procedure adopted by the respondents for adjudging the suitability of the candidates to work on computers was akin to regular selection and, therefore, the petitioner will be deemed to have been appointed as EDP Assistant on regular basis and he cannot be reverted to the so-called parent cadre of Electrician.

Ms.Uma Devi, learned counsel for the respondents reiterated the stand taken by her clients in the counter-affidavit and submitted that the petitioner, who was never appointed on the post of EDP Assistant, has no right to seek a direction for being

continued on that post. She pointed out that the process initiated vide communication dated 20-7-1998 was intended to adjudge the suitability of the existing employees to work on the computers and not for appointment on the particular post.

We have considered the respective submissions and carefully scanned the record. In our opinion, the petitioner has no right to continue to work at the Computer Centre because vide order dated 26-8-1998, he was merely deputed to work there. The petitioner's claim that he had been regularly appointed as EDP Assistant is not supported by the contents of letters dated 20-7-1998 and 4-8-1998 vide which General Manager, Mandamarri Area invited applications from the existing employees for adjudging their suitability to work on computers. A conjoint reading of communications dated 20-7-1998, 4-8-1998 and 26-8-1998 makes it clear that management of the company had invited applications from the eligible persons only for the purpose of adjudging their suitability/fitness to work on the computers and not for appointment on any particular post. Office order dated 26-8-1998 also shows that the petitioner was merely deputed to work at the Computer Centre, Mandamarri on temporary basis for a period of two months. By no stretch of imagination, that order can be construed as an order of appointment on the post of EDP Assistant. Therefore, the petitioner cannot claim a right, much less a vested right, to hold the post of EDP Assistant and his complaint against communication dated 12-7-2001 issued by Senior System Analyst, Mandamarri requiring him to report for duty to Commercial Manager, Kalyani Khani 5A is liable to be rejected being totally misconceived.

In **State of Punjab v. Inder Singh** their Lordships of the Supreme Court considered the question whether a person who is sent on deputation to the particular post acquires a right to hold that post or claim absorption. The factual matrix of that case shows that while working as a Constable in Punjab Police, the respondent was sent on deputation to CID in the same rank. In the course of service, he was promoted as Head Constable and then as Sub-Inspector (both on ad hoc basis). By an order dated 15-9-1990, he was sought to be repatriated to the parent cadre. The respondent successfully challenged his repatriation to the parent cadre. A learned Single Judge of the High Court quashed the order of repatriation. On appeal, the Division Bench confirmed the order of the Single Bench. While reversing the orders of the High Court, the Supreme Court explained the concept of "deputation" in the

following words:-

> "The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law. The dictionary meaning of the word "deputation" is of no help. In simple words, "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority which controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post."

The ratio of the aforementioned judgment of the Supreme Court is that a person appointed on deputation does not have the right to hold a particular post and at the end of deputation he is liable to be repatriated to his parent cadre/original position.

The judgment of the Supreme Court in **Umapati Choudhary v. State of Bihar** (supra) does not, in any manner, help the cause of the petitioner because in that case the Supreme Court considered the question whether a person who has been permanently absorbed in a foreign service could be repatriated to the parent cadre, and answered the same in the negative.

Reverting to the petitioner's case, we find that he has not produced any evidence before the Court to show that the competent authority had made selection for appointment to the post of EDP Assistant and he was appointed on that post. What was done by General Manager, Mandamarri Area was to adjudge the suitability of the eligible employees to work on computers. This exercise cannot, by any stretch of imagination, be equated with the exercise undertaken for making recruitment on any particular post. Therefore, it is not possible to entertain his prayer for issuance of a mandamus to the respondents to allow him to continue on the post of EDP Assistant or to nullify communication dated 12-7-2001 issued by System Analyst, Mandamarri Area requiring him to report for duty to Colliery Manager, Kalyani Khani 5A.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S.SINGHVI, C.J.

16th March, 2006.

G.BHAVANI PRASAD, J.

svs/ARS/vtv